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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/12

SPONSOR Maestas LAST UPDATED _____ HB 164

SHORT TITLE Increase Penalties for Homicides SB _____

ANALYST Jorgensen

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|-----------|------------------------------|------------------|
| FY12 | FY13 | | |
| | \$1,800.0 | Recurring | General |

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 44

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 164 would enhance or increase the incarceration period for offenders convicted of second degree murder (a second degree felony) from fifteen to twenty years, and require nine years of which not be suspended, deferred or taken under advisement; increase the incarceration period for voluntary manslaughter from six years to ten years, and for involuntary manslaughter from eighteen months to five years. It would also increase the fines for second degree murder up to \$12,500, for voluntary manslaughter up to \$10,000, and would establish a fine of up to \$5,000 for those offenders convicted of involuntary manslaughter.

The bill contains \$1.8 million to be appropriated to the public defender department and district attorneys statewide.

FISCAL IMPLICATIONS

Any increase in penalty carries with it the probability of an increase in trial and appellate caseload. The appropriation contained in the bill ameliorates that risk for the district attorneys

and public defender department for FY13.

The bill does not provide an appropriation to NMCD to cover increased incarceration costs resulting from the bill.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$36,700 per year in a state owned/ operated prison to \$30,093 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$32,408 per year. Because medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

SIGNIFICANT ISSUES

NMCD estimates that the per offender cost of enacting this legislation could be substantial at up to \$140,000 per offender convicted under the guidelines. The rationale of the department is as follows:

NMCD has approximately 421 inmates in its custody who have been convicted of second degree murder. That constitutes 6.5% of the current inmate population. While these 421 inmates would not serve the additional five year sentence imposed by this bill, it is fair to assume that NMCD's percentage of second degree murderers will remain around 6.5% or at a significant percentage in future years. Second degree murder is defined as serious violent offense, meaning that those offenders convicted of it are eligible to earn only 4 days of good time per month while in prison and must essentially serve 85% of their prison sentences. Thus, any future offender sentenced to prison to serve this enhanced or additional five year sentence is going to serve about 4.5 years of that additional or enhanced sentence before paroling from prison. That constitutes an additional incarceration cost of at least \$140,000 for each inmate who serves this enhanced or additional five year sentence. This cost will be incurred by NMCD in later years, and not in the current relevant three year period.

RELATIONSHIP

House bill 44 would increase the penalty for second degree murder to twenty-five years.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

NCJ/amm:svb